

CHAPTER 19-13.1

NORTH DAKOTA COMMERCIAL FEED LAW

19-13.1-01. Enforcing official. This chapter must be administered by the agriculture commissioner, hereinafter referred to as the commissioner.

19-13.1-02. Definitions of words and terms. When used in this chapter:

1. "Brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others.
2. "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds when not adulterated within the meaning of section 19-13.1-07, which are distributed for use as feed or for mixing in feed. The commissioner, by rule, may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed or mixed with other materials and are not adulterated within the meaning of section 19-13.1-07.
3. "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.
4. "Customer-formula feed" means a mixture of commercial feeds or feed ingredients each batch of which is mixed according to the specific instructions of the final purchaser or contract feeder.
5. "Distribute" means to offer for sale, sell, exchange, or barter commercial feed or customer-formula feed; or to supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder. "Distributor" means any person who distributes.
6. "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.
7. "Feed ingredient" means each of the constituent materials making up a commercial feed.
8. "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed.
9. "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrapper or accompanying such commercial feed.
10. "Manufacture" means to grind, mix, or blend or further process a commercial feed for distribution.
11. "Mineral feed" means a substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.

12. "Official sample" means any sample of feed taken by the commissioner and designated as "official" by the commissioner.
13. "Percent" or "percentage" means percentage by weight.
14. "Person" includes individual, partnership, corporation, limited liability company, and association.
15. "Pet" means any domesticated animal normally maintained in or near the household of the owner.
16. "Pet food" means any commercial feed prepared and distributed for consumption by pets.
17. "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.
18. "Retail" means to sell to the consumer or final purchaser.
19. "Sell" or "sale" includes exchange.
20. "Specialty pet food" means any commercial feed prepared and distributed for consumption by any animal normally maintained in confinement, including gerbils, hamsters, birds, fish, snakes, turtles, and zoo animals.
21. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

19-13.1-03. Registration and license.

1. Each pet food and specialty pet food must be registered before being distributed in this state. The application for registration must be submitted on forms furnished by the commissioner. The application must be accompanied by a label and any other printed matter describing each product and the registration fee of one hundred dollars per product. Upon approval by the commissioner, a certificate of registration must be furnished to the applicant. Registrations are not transferable. Registration covers a two-year period beginning January first and ending December thirty-first of every odd-numbered year. Registration renewals received after January thirty-first must be assessed a penalty fee of ten dollars per product. Products found marketed in this state without proper registration must be assessed the penalty fee of twenty-five dollars.
2. A distributor is not required to register any brand of pet food or specialty pet food that is already registered under this chapter by another person.
3. Each person who manufactures commercial feed or whose name appears on the label of a commercial feed, other than pet food or specialty pet food, shall obtain a feed manufacturer's license from the commissioner for each location. Each person who sells commercial feed at retail, other than pet food or specialty pet food, shall obtain a feed retailer's license from the commissioner. The license application must be on forms furnished by the commissioner and must be accompanied by a fee of one hundred dollars for feed manufacturers or fifty dollars for feed retailers. The license covers a two-year period beginning January first and ending December thirty-first of every odd-numbered year. If a manufacturer is also a retailer of feed, the retail license is waived. A feed retailer's license must be obtained for each location used by the retailer. Licenses are not transferable. License renewal applications received after January thirty-first may be assessed a penalty fee of ten dollars for retailers and twenty dollars for manufacturers. This subsection does not apply to any person who custom manufactures feed only for another person at that person's request and for that person's own use.

4. Each feed manufacturer required to be licensed under this chapter shall submit and maintain a current label file of all the feeds distributed in the state with the commissioner except custom formula feeds.
5. The commissioner may refuse to register or license any product or applicant not in compliance with the provisions of this chapter and to cancel any registration or license subsequently found not to be in compliance with any provision of this chapter; provided, however, that no registration or license may be refused or canceled until the registrant or licensee has been given opportunity to be heard before the commissioner and to amend the application in order to comply with the requirements of this chapter.

19-13.1-04. Labeling. Any commercial feed distributed in this state must be accompanied by a legible label bearing the information prescribed by rule.

19-13.1-05. Additional labeling requirements. Repealed by S.L. 1991, ch. 225, § 13.

19-13.1-06. Inspection fees. There must be paid to the commissioner for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms] with a minimum of ten dollars. However, customer-formula feeds are exempted if the inspection fee is paid on the commercial feeds that they contain and distribution of commercial feeds to manufacturers is exempted if the commercial feeds so distributed are used solely in manufacture of feeds that are registered. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the thirty-first day of January of each year, an annual statement under oath setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding year; and upon filing such statement shall pay the inspection fee. If the statement is not received by January thirty-first, a penalty of ten percent of the amount owed, with a minimum of ten dollars and a maximum of two hundred fifty dollars, may be assessed. The person whose name appears on the label as the manufacturer, guarantor, or distributor shall assume the liability for reporting and paying the inspection fee.
2. Keep such records as may be necessary or required by the commissioner to indicate accurately the tonnage of commercial feed distributed in this state and the commissioner has the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes sufficient cause for the cancellation of all licenses on file for the distributor.

19-13.1-07. Adulteration. No person may distribute an adulterated feed. A commercial feed or customer-formula feed is adulterated:

1. a. If it bears any poisonous or deleterious substance that may render it injurious to health. If the substance is not an added substance, the commercial feed is not considered adulterated if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;
- b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance that is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 75-717; 52 Stat. 1049; 21 U.S.C. 346] other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive;

- c. If it is, or it bears or contains, any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 85-929; 72 Stat. 1785; 21 U.S.C. 348];
 - d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a]. Except that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a] and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the processed feed may not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a];
 - e. If it is, or it bears or contains, any color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 102-571; 106 Stat. 4498; 21 U.S.C. 379e]; or
 - f. If it is, or it bears or contains, any new animal drug which is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 90-399; 82 Stat. 343; 21 U.S.C. 360b];
2. If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;
 3. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;
 4. If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label;
 5. If it contains viable weed seeds in amounts exceeding the limits which the commissioner shall establish by rule;
 6. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess;
 7. If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed;
 8. If it has been prepared, packed, or held under unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
 9. If it is, in whole or in part, the product of a diseased animal or of an animal that has died otherwise than by slaughter which is unsafe within the meaning of

section 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 75-717; 52 Stat. 1046; 21 U.S.C. 342];

10. If its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health; or
11. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 85-929; 72 Stat. 1785; 21 U.S.C. 348].

19-13.1-08. Misbranding. No person may distribute misbranded feed. A commercial feed or customer-formula feed is misbranded:

1. If its labeling is false or misleading in any particular.
2. If it is distributed under the name of another feed.
3. If it is not labeled as required in section 19-13.1-04 and in rules prescribed under this chapter.
4. If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rules of the commissioner; in the adopting of the rules the commissioner shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials.
5. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

19-13.1-09. Inspection, sampling, analysis.

1. For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the commissioner, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized to enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and to inspect at reasonable times and within reasonable limits and in a reasonable manner, the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of only such records and production and control procedures as may be necessary to determine compliance with the good manufacturing practice rules established under subsection 6 of section 19-13.1-07.
2. A separate notice must be given for each such inspection, but a notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle must be so notified.

3. If the officer or employee making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the officer or employee shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.
4. If the owner, or agent of the owner, of any factory, warehouse, or establishment described in subsection 1 refuses to admit the officer or agent to inspect in accordance with this section, the commissioner is authorized to obtain a warrant from any state court directing the owner or the owner's agent to submit the premises described in the warrant to inspection.
5. Any agent of the commissioner is authorized to enter upon any public or private premises, including any vehicle of transport, during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds to enforce this chapter.
6. Sampling and analysis must be conducted in accordance with methods published by the association of official analytical chemists or in accordance with other generally recognized methods.
7. The results of all analyses of official samples must be forwarded by the commissioner to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the registrant may request a portion of the sample concerned within thirty days following receipt of the analysis.
8. In determining for administrative purposes whether a commercial feed is deficient in any component, the commissioner must be guided by the official sample obtained and analyzed as provided for in this chapter.

19-13.1-10. Rules.

1. The commissioner is charged with the enforcement of this chapter and may adopt such reasonable rules as may be necessary to efficiently administer this chapter. When adopting any rules under the authority of this section, the commissioner shall follow the procedures provided for in chapter 28-32. Publicity concerning the public hearing must be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.
2. The official definitions of feed ingredients and official feed terms adopted and published by the association of American feed control officials and any amendments or supplements thereto may be adopted by rule as the official definitions.

19-13.1-11. Detained commercial feeds. When the commissioner has reasonable cause to believe any lot of commercial feed is being distributed in violation of this chapter or of any of the prescribed regulations under this chapter, the commissioner may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the commissioner or the court. The commissioner shall release the lot of commercial feed so withdrawn when the provisions and rules have been complied with. If compliance is not obtained within thirty days, the commissioner may begin, or upon request of the distributor shall begin, proceedings for condemnation.

Any lot of commercial feed not in compliance with the provisions and regulations is subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which the commercial feed is located. If the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it must be disposed of in any manner consistent with the quality of the commercial feed and the laws of the

state; provided, that in no instance may the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter.

19-13.1-12. Penalties.

1. Any person convicted of violating this chapter or the rules issued thereunder or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner from performing the commissioner's duties in connection with the provisions of this chapter is guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the person performing the analysis, or that person's authorized agent, must be accepted as prima facie evidence of the composition.
2. This chapter does not require the commissioner to seek prosecution or the institution of seizure proceedings based on minor violations of the chapter when the commissioner deems that the public interest will be best served by a suitable notice of warning in writing.
3. Each state's attorney to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for prosecution, an opportunity shall be given the distributor to present the distributor's view to the commissioner.
4. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction is to be issued without bond.
5. Any person adversely affected by an act, order, or ruling made pursuant to this chapter may within forty-five days thereafter bring action in the district court for Burleigh County for new trial of the issues bearing upon such act, order, or ruling, and upon such trial the court may issue and enforce such orders, judgments, or decrees as the court may deem proper, just, and equitable.

19-13.1-13. Publications. The commissioner may publish, in such forms as the commissioner may determine proper, information concerning the sales of commercial feeds, together with such data on their production and use as the commissioner may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state. However, the information concerning production and use of commercial feeds may not disclose the operations of any person.

19-13.1-14. Cooperation with other entities. The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations to carry out this chapter.